IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 344/2003 Single Bench

PETITIONER

Anjani Kumar Pandey,
S/o. Shri Babulal Pandey,
Aged about 31 years,
Presently working as Teacher
(Guruji),
Education Guarantee School,
Centre Darripara,
Konargarh,
Janpad Panchayat, Pamgarh,
District Janjgir-Champa (C.G.)

P. R. No. 2624/03
Presented by Shri Ahmed Khan
dated 12/09/03

V E R S U S

RESPONDENTS

1. State of Chhattisgarh,
Through Secretary,
Panchayat & Social Welfare
Department,
D.K. Bhawan,
Mantralaya, Raipur (C.G.)

2. Collector, Janjgir-Champa-cum-
Mission Director, Janjgir-
Champa (C.G.)

3. Chief Executive Officer,
Janpad Panchyat,
Pamgarh,
District Janjgir-Champa (C.G.)

4. Gram Panchayat,
Konargarh,
Janpad Panchyat, Pamgarh,
District Janjgir-Champa (C.G.)
Through its Secretary/Sarpanch

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उप आयुक्त
एन.के. शुक्ला
बिलासपुर तहसील कार्य
13/08/12

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

The petitioner above-named most respectfully submits as under:-

AFR

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

W. P. No. 3144 of 2003

Petitioner : Anjani Kumar Pandey

Versus

Respondents : State of Chhattisgarh & others

ORDER

Post for 20-2-2007

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 3144 of 2003

Petitioner : Anjani Kumar Pandey

Versus

Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Ashish Shrivastava, Advocate for the Petitioner.

Shri Arvind Dubey, Panel Lawyer for the respondents No. 1 and 2.

Shri Ratnesh Kumar Agrawal, Advocate for the respondent No.3.

Shri S. K. Beriwal, Advocate on behalf of Shri G. K. Beriwal, Advocate for the respondent No.4.

ORDER

(Passed on this 20th day of February, 2007)

1. By this petition the petitioner challenges the legality and validity of the order dated 27.1.2003 (Annexure P/7), whereunder the select list prepared for Education Guarantee Center, Konargarh, Pamgarh, District- Janggir Champa for appointment on the post of Guruji was cancelled.

2. The indisputable facts, according to the petitioner, are that the petitioner has been imparting education of small children in the school run under the Education Guarantee Scheme (for short 'E.G.S.'), Darripara, Konargarh, free of cost w.e.f. 1.7.2000 on the basis of his commitment to the education. The E.G.S. school wrote a letter (Annexure P/1) to the Block Development Officer, Block Pamgarh for appointing the petitioner as second Guruji in the same school. Accordingly, vide order dated 1.10.2002 (Annexure P/2), issued by the Chief Executive Officer, (for short "C.E.O.") Janpad Panchayat Pamgarh, the proposal for appointment of the petitioner as second Guruji was approved in the E.G.S. center

Darripara, Konargarh. The terms and conditions of appointment was that the appointment of the petitioner as second Guruji in the school was purely temporary and is based under the education mission.

3. The Gram Panchayat, Konargarh, accordingly, passed the order on 1.10.2002 (Annexure P/3). The petitioner joined the school on 2.11.2002 (Annexure P/4) as second Guruji and thereafter was sent for training.

4. The District Project Mission Director, under the Rajiv Gandhi Shiksha Mission Janjgir Champa vide his letter dated 17.1.2003 (Annexure P/5) intimated the C.E.O./respondent No.3 that the panel of teachers (Guruji's) dated 1.10.2002 for appointment in Education Guarantee Centers at Ricemeelpara Chandipara, Aa.Ja.Para Dhangaon and Darripara Konargarh, wherein the petitioner was appointed, was contrary to the scheme as the appointments were strictly banned. It was further stated that the respondent No.3 would be personally liable for payment of honorarium, if any.

5. Thereafter, by order dated 27.1.2003 (Annexure P/7) the Secretary of Village Panchayat Konargarh intimated the petitioner that in compliance of the order dated 17.1.2003 issued by the Collector and District Education Director, Rejeev Gandhi Shiksha Mission, Janjgir Champa, the list of the Education Guarantee Center, under which the appointment of the petitioner was made, has been cancelled.

6. Being aggrieved, the petitioner has filed this petition without stating grounds in the pleadings. Shri Ashish Shrivastava, learned counsel for the petitioner, however, would orally submit that the

cancellation of the appointment of the petitioner on the post of second Guruji was violative of the principles of natural justice as no opportunity of hearing was provided to him. Learned counsel further submitted that once the petitioner has joined the post of second Guruji the list cannot be cancelled without affording proper opportunity of hearing to the petitioner. Thus, the petitioner seeks quashing of the impugned order dated 17.1.2003 (Annexure P/5) and the order dated 27.1.2003(Annexure P/7)

7. Per contra, learned counsel appearing for the respondents would submit that the appointment of the petitioner was contrary to the scheme, as a Second Guruji in the school has to be necessarily a lady candidate. The petitioner has no right to the post as the petitioner is not appointed in accordance with the constitutional scheme of the employment. There was no necessity of giving a notice to the petitioner as the facts are clear and the petitioner very well knew in advance that his appointment on the post of second Guruji was contrary to the scheme.

8. Having heard learned counsel for the parties and having perused the pleadings and records appended thereto, it is apparent that the appointment of the petitioner as second Guruji was contrary to the scheme. The scheme provides for appointment of second Guruji in case there are more than 50 children, in that event the second Guruji would be necessarily a lady teacher. The scheme as framed by the then Government of Madhya Pradesh for expansion of education under the Rajeev Gandhi Education Mission for appointment of the teachers, provides as under:-

" ई. जी. एस. के शिक्षक को गुरूजी कहा जाता है । प्रत्येक 40 के समूह के लिये, तथा आदिवासी क्षेत्रों में प्रत्येक 25 बच्चों के लिये एक गुरूजी की व्यवस्था होती

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है । बच्चों की संख्या यदि 50 से अधिक हो तो एक और गुरूजी नियुक्त किया जा सकता है ताकि शिक्षक --विद्यार्थी अनुपात 1 : 40 के लगभग बना रहे । गुरूजी की न्यूनतम शैक्षिक योग्यता उच्चतर माध्यमिक परीक्षा पास होना होती है तथापि इतना पढा लिखा स्थानीय व्यक्ति यदि न मिले तो हाईस्कूल उत्तीर्ण व्यक्ति पर भी विचार किया जा सकता है। गुरूजी की पहचान वही समुदाय करता है जिसने स्कूल खोलने की मांग की है । गुरूजी स्थानीय व्यक्ति ही होगा । यहां स्थानीय से तात्पर्य है कि वह उस बसाहट का रहवासी हो जिसने स्कूल खोलने की मांग की है । यदि बसाहट में निर्धारित योग्यता प्राप्त व्यक्ति उपलब्ध न हो तो उस ग्राम पंचायत क्षेत्र के व्यक्ति का चुनाव भी किया जा सकता है जिसके अंतर्गत वह बसाहट आती है । निर्धारित क्षेत्र में योग्य व्यक्ति उपलब्ध न होने पर केवल अपवाद स्वरूप किसी गुरूजी का चुनाव पडोस के गांव, ग्राम पंचायत से किया जा सकेगा । ऐसे मामले में तथ्यों की पूरी छानबीन करने के बाद ई. जी. एस. जिला स्तरीय प्रबंधन इसकी स्वीकृति देगा । **गुरूजी के चयन में प्राथमिकता महिला को दी जायेगी । जहां एक से अधिक गुरूजी की आवश्यकता होगी वहां उनमें से एक अनिवार्य रूप से महिला होगी ।** गुरूजी की नियुक्ति स्थानीय ई. जी. एस. स्कूल के लिये होगी और उसे स्थानीय सामुदायिक कार्यकर्ता माना जायेगा । उसे अपनी उन सभी सेवाओं के लिये हर महीने पूरे वर्ष मानदेय प्राप्त होगा ।"

Thus, the appointment of the petitioner was contrary to the education guarantee scheme.

9. On the question, as to whether the petitioner has a right to the post, it is well settled principle of law that if the appointment of the petitioner is dehors the constitutional scheme, the said employee would not have a right to the post. Article 16 of the Constitution of India prohibits discrimination in case of employment or appointment to any office under the State on the ground of religion, caste, sex, descent, place of birth, residence or any of them. Sub clause (3) of the Article 16 provides for framing of a law by Parliament in regard to a class or classes of

employment or appointment to an office under the Government of, or in any local or other authority within a State or within a Union territory, any requirement as to residence within that State or Union territory.

10. In the present case the education guarantee scheme provides that the teachers should be a resident of the particular ward, if not possible may be of the same village, if still not available then from neighbouring village or village Panchayat. This itself is contrary to the provisions of Article 16(2) of the Constitution of India. The Parliament has not framed, admittedly, any law for appointment of local residents only within the area under the scheme.

11. In the case of **Union of India and others Vs. Sanjay Pant and others** { 1993 Supp (2) S.C.C. 494 } the Hon'ble Supreme Court observed as under :-

> "6. .....In two cases viz., M. Palaniappan v. Union of India[1] and (Smt.) Rita Kumari[2] the Tribunal has already held that termination of ad hoc appointee on the ground of not being a local candidate is illegal. These decisions were followed and applied in P.G.James v. Union of India[3] where it was held that refusal to offer regular appointment on the said ground is illegal. These cases conclude the issue in this case. Moreover, requirement of residence in a particular territory (in this case, Union Territory of Andaman and Nicobar Islands) is opposed to Article 16(2). Under Article 16(3) only a law made by the Parliament can impose such a restriction or requirement, as the case may be....."

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12. A constitutional Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** { (2006) 4 SCC 1 } has held as under:-

"6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can made appointments only in accordance with the rules....."

"12.....This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in

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various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme."

13. The appointment of Guruji and second Guruji is not in accordance with the constitutional scheme of employment as it does not contemplate a proper open competition or selection of candidates from other areas also. Thus, the petitioner as Guruji has no right to the post.

14. On the question of the principles of natural justice by a catena of decisions the Hon'ble Supreme Court and in a latest decision in **P. D. Agrawal Vs. State Bank of India and others** { (2006) 8 S.C.C. 776 }, while dealing with the applicability of the principles of natural justice observed as under:-

"30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

"39. Decision of this Court in S.L.Kapoor v. Jagmohan[16] whereupon Mr Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of

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prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma[17] and Rajendra Singh v. State of M.P.[18] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula. (See Viveka Nand Sethi v. Chairman, J.&K Bank Ltd.[19] and State of U.P. v. Neeraj Awasthi[20]. See also Mohd. Sartaj v. State of U.P.[21]).**"**

15. In the facts of the present case, it is not the case of the petitioner that the appointment of the petitioner was in accordance with the constitutional scheme. The appointment of the petitioner, admittedly, was contrary to the scheme as the second Guruji should necessarily be a lady candidate. The principles underlying behind that seems to be equal participation of the man and women in imparting education to the local children and preference to a woman, being more closer to a child in natural ambience. Applying the above principles of law, as well settled, the

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petitioner's appointment on the post of second Guruji was contrary to the education guarantee scheme and unconstitutional and as such he has no right to the post.

16. It is further held that it is incorrect to say that the principles of natural justice has not been followed as it could not be put in a straitjacket formula when the facts are admitted. Hon'ble Supreme Court in **Canara Bank Vs. V. K. Awasthy** {(2005) 5 S.C.C. 321}, relied on by the learned counsel for the petitioner, held as under : -

> "18. As was observed by this Court we need not to go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned. (See Godde Venkateswara Rao v. Govt. of A.P.[29]). It is to be noted that legal formulations cannot be divorced from the fact situation of the case....."

In the facts and circumstances of the case when facts are admitted, the holding of proper enquiry after giving a show cause notice would be mere formality.

17. As a result and for the discussions made hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur